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FILED
04/27/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0078-R-2023
Stern, Anika
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Skunk Creek Ranch LLC

CASE 41U-0078-R-2023

41U 96705-00

41U 96706-00

41U 96707-00

41U 96913-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Skunk Creek Ranch, LLC (Skunk Creek) is the record owner of claims 41U 96705-00, 41U 96706-00, 41U 96707-00, and 41U 96913-00.

2. Claims 41U 96705-00, 41U 96706-00, 41U 96707-00, and 41U 96913-00 were decreed with DNRC issue remarks:

41U 96705-00:

AN AMENDMENT WAS SUBMITTED ON 08/09/2021 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41U 96706-00:

AN AMENDMENT WAS SUBMITTED ON 08/09/2021 REQUESTING TO AMEND THE THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41U 96706-00, 41U 96707-00.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

41U 96707-00:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41U 96706-00, 41U 96707-00.

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION IN MAXIMUM ACRES IRRIGATED.

41U 96913-00:

AN AMENDMENT WAS SUBMITTED ON 08/09/2021 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESESE SEC 17 TWP 17N RGE 6W LEWIS AND CLARK COUNTY.

All issue remarks must be addressed.

Amendment Remarks:

3. The Amendments referenced in issue remarks decreed on claims 41U 96705-00, 41U 96706-00, and 41U 96913-00 were submitted to the DNRC on August 9, 2021 and were signed by Paul Nelson. The intention of the Amendments is unclear; the Amendments are blank with the exception of a claim number, the owner name ("Skunk Creek Ranch, LLC"), and Paul Nelson's signature; an abstract was attached to each

amendment along with an aerial photograph (all three Amendments) and a water resources survey map (claims 41U 96705-00 and 41U 96706-00).

4. The aerial photograph attached to the Amendment for claim 41U 96705-00 included a notation stating “HEADGATE not in use”:



It is unclear if the intention of this Amendment was to indicate that the claim is no longer in use and has been abandoned, or something else.

5. The aerial photograph attached to the Amendment for claim 41U 96706-00 included a notation stating “NO DIVERSION”:



It is unclear if the intention of this Amendment was to indicate that the claim is no longer in use and has been abandoned, or something else.

6. The aerial photograph attached to the Amendment for claim 41U 96913-00 included a notation stating “spring”:



It is unclear if the intention of this Amendment was to show the location of the point of diversion, or something else.

Over-Filed Notice of Appropriation Remarks:

7. Claims 41U 96706-00 and 41U 96707-00 were decreed with remarks indicating the claims are based on the same filed appropriation.

As claimed, claims 41U 96706-00 and 41U 96707-00 both claimed the entire 100 miner's inches (2.50 cubic feet per second) George D. McClain right from Big Skunk Creek. During the Temporary Preliminary Decree, the flow rates for both claims were reduced to the 17.00 gallon per minute guideline. However, the George D. McClain Notice of Appropriation is still overclaimed:

41U 96706-00: 1.33 cfs
41U 96707-00: 1.40 cfs
TOTAL: 2.77 cfs

If both claims are based on the George D. McClain filed right, claims 41U 96706-00 and 41U 96707-00 cannot overclaim 2.50 cfs right. A pro rata distribution of the flow rate would resolve the over-filing ($2.50 \text{ cfs} = 1,122 \text{ gpm}/72 \text{ acres} = 15.58 \text{ gpm per acre}$):

41U 96706-00: 1.21 cfs
41U 96707-00: 1.28 cfs
TOTAL: 2.49 cfs

8. On February 3, 2023, a deadline was set for Skunk Creek to address outstanding issues for claims 41U 96705-00, 41U 96706-00, 41U 96707-00, and 41U 96913-00. Skunk Creek failed to respond to the Order.

9. On March 13, 2023, an Order Setting Show Cause Filing Deadline was issued. The Order set a deadline for Skunk Creek to clarify the August 9, 2021 Amendments submitted to the DNRC. The Order stated that if Skunk Creek was indicating any of its claims have been abandoned or never perfected, it should state that clearly. The Order also stated that Skunk Creek should clarify the point of diversion for all claims by the deadline. The Order also stated that Skunk Creek Ranch, LLC should resolve the over-filed notice of appropriation between claims 41U 96706-00 and 41U 96707-00 by the deadline. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that Skunk Creek does not intend to pursue the August 9, 2021 Amendments and that Skunk Creek agrees the over-filed Notice of Appropriation issue remark should be resolved by reducing the flow rate for claim 41U 96706-00 to 1.21 cfs and the flow rate of claim 41U 96707-00 to 1.28 cfs. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329

P.3d 558, 564. The point of diversion issue remarks decreed on claims in this Case do not overcome the prima facie Statements of Claim. Other than the issue remarks, the DNRC did not provide information to support the addition of the remarks to the claims.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The place of use issue remark decreed on claim 41U 96707-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The flow rate for claim 41U 96706-00 should be reduced to 1.21 cfs; the flow rate for claim 41U 96707-00 should be reduced to 1.29 cfs.

2. The issue remarks should be removed from each of the claims in this Case. Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Skunk Creek Ranch LLC
299 S Main St Ste 2450
Salt Lake City, UT 84111-2282

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96705-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SKUNK CREEK RANCH LLC
299 S MAIN ST STE 2450
SALT LAKE CITY, UT 84111 2282

Priority Date: JULY 15, 1890

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.52 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 40.00

Source Name: UNNAMED TRIBUTARY OF WRANGLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	10	17N	6W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: DIKE

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		W2	10	17N	6W	LEWIS AND CLARK
Total:	40.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96706-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SKUNK CREEK RANCH LLC
299 S MAIN ST STE 2450
SALT LAKE CITY, UT 84111 2282

Priority Date: MAY 10, 1893

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.21 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 35.00

Source Name: BIG SKUNK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESE	17	17N	6W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: DIKE

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	35.00		NE	16	17N	6W	LEWIS AND CLARK
Total:	35.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96707-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SKUNK CREEK RANCH LLC
299 S MAIN ST STE 2450
SALT LAKE CITY, UT 84111 2282

Priority Date: MAY 10, 1893

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.29 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 37.00

Source Name: BIG SKUNK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSW	16	17N	6W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: DIKE

Period of Use: APRIL 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	37.00		W2	22	17N	6W	LEWIS AND CLARK
Total:	37.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96913-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SKUNK CREEK RANCH LLC
299 S MAIN ST STE 2450
SALT LAKE CITY, UT 84111 2282

Priority Date: DECEMBER 31, 1880

Type of Historical Right:

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SPRING, UNNAMED TRIBUTARY OF BIG SKUNK CREEK

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESE	17	17N	6W	LEWIS AND CLARK

Period of Diversion: JULY 15 TO OCTOBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JULY 15 TO OCTOBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESE	17	17N	6W	LEWIS AND CLARK